

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Lands – Visakhapatnam District –Appeal filed by Smt Puvvala Kamala, Wife of Lokesh Behara, TPT Colony, Visakhapatnam against the orders passed by the 1<sup>st</sup> Respondent, i.e., Joint Collector, Visakhapatnam district in Rc.No.3987/ 07 D2., dated 01-03-2008 - Case posted for hearing on **17-09-2011 AT 12-00 Noon** – Heard the case - Case remanded back to the Joint Collector, Visakhapatnam for re-verification– Orders – Issued.

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REVENUE (ASSIGNMENT –I) DEPARTMENT

G.O.Ms.No. 1735

Dated: 21- 09-2011

READ the following:-

1. Appeal Petition filed by Smt Puvvala Kamala, Wife of Lokesh Behara TPT Colony, Visakhapatnam through the Counsel for the appellant dated 30-08-2008.
2. Govt.Memo.No.44854/ Assn.I(2)/2008-1., Dated 04-10-2008.
3. From the Collector, Visakhapatnam Rc.No.3822/ 2008/ D2, Dated 06-11-2008., and 20-06-2009.
4. From the Spl.CS & CCLA, Hyderabad Ref. ROR 1/ 726/ 2008, Dated 30-12-2009.
5. Representation of Smt Puvvala Kamala, Wife of Lokesh Behara TPT Colony, Visakhapatnam, dated 17-03-2010.and 13-04-2011.
6. Govt. Memo. No.44854/ Assn.I(2)/2008-8., Dated 30-08-2011.
7. Appeal Petition filed by Smt Puvvala Kamala, Wife of Lokesh Behara TPT Colony, Visakhapatnam through the Counsel for the appellant dated 7-09-2011.
8. Govt. Memo. No.44854/ Assn.I(2)/2008-9., Dated 14-09-2011.
9. From the Counsel for the Appellant written arguments Dated:17-09-2011.

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ORDER:-

Appeal filed by Smt Puvvala Kamala, Wife of Lokesh Behara, TPT Colony, Visakhapatnam before the Government through the Counsel for the Appellant, against the orders passed by the 1<sup>st</sup> Respondent i.e., Joint Collector, Visakhapatnam district in Rc.No.3987/ 07 D2 dated 01-03-2008, and requested for Set-aside the proceedings on the following grounds:-

- I. The 1<sup>st</sup> respondent i.e., Jt.Collector ought to have considered the matter intrinsically and recorded reasons and findings for dismissing the Revision filed by the Appellant. A perusal of the impugned proceedings would disclose that the 1<sup>st</sup> Respondent has dealt with the matter in a highly superficial and perfunctory manner and dismissed the Revision by passing a very cryptic order. It is now well settled that the recording of reasons by a Statutory Authority is an integral part of principles of natural justice. Therefore the order under challenge is liable to be set aside being violative of principles of natural justice.
- II. The 1<sup>st</sup> Respondent failed to consider the relevant record which is in the custody of the Revenue dept., therefore holding that there is no D-Form patta is contrary to law and hence unsustainable.
- III. The 1<sup>st</sup> Respondent ought to have seen that the failure of the Revenue authorities in incorporating the change in the Revenue Records pursuant to the grant of D-Form Patta cannot be put against the Appellant as it is their duty to effect mutation in the Revenue Records. In fact the original assignee's name was also entered into Adangal.
- IV. The first respondent ought to have seen that the original Pattadar is entitled to alienate the land after completion of 10 years as it was granted to an Ex-serviceman. Therefore the alienation in pursuance of GO Ms.No.1117, Dated 11.11.1993 made by the original pattadar in favour of the Appellant is clearly valid in law and confers right, title and interest over the said land to the Appellant.

The Appeal filed by the applicant was examined and the Dist. Collector, Visakhapatnam was requested to submit the relevant records with para-wise remarks to Government for taking further course of action.

In response to the above, the Dist. Collector, Visakhapatnam has submitted report to Government in which he has reported that Smt. Puvvala Kamala earlier applied for incorporation of changes for the lands measuring Ac.5-00 in Sy.No.346/7 of Madhurawada village. After due enquiries the then MRO Visakhapatnam Rural rejected the request of the applicant as the lands are Government lands. Against the Endorsement of the MRO- Rural, Smt P. Kamala filed an appeal before the RDO, Visakhapatnam under section 5 (5) of AP Rights in Land and Pattadar Pass Books Act, 1971 against the orders of the MRO Rural for issue of Pattadar Pas Books for an extent of Ac.5-00 in Sy.No.346/ 7 of Madhurwada village which was purchased by her from Sri Chilla Appalaraju, Ex-serviceman. He has further reported that the RDO, Visakhapatnam after conducting enquiries uphold the orders of the MRO Rural as the Vendor Chilla Appalaraju, S/o Appalaswamy from whom the petitioner has purchased the land and requested for incorporation of the changes in the revenue records is never in the possession of the said lands and also his name did not find place in any revenue records. Further the RDO has observed that according to the village records no D-Patta was granted in Sy.No.346. Finally the RDO has conducted that both the seller and the purchaser are fully aware about the creation of the documents i.e., D-Patta PPBs and the unenforceability of the sale deed and applied for incorporation of the changes in the village accounts with a mala fide intention to grab the valuable government land by resorting to fraud and cheating. Against the orders of the RDO, Visakhapatnam Smt Puvvala Kamala wife of Lokesh Behara filed a WP No.26512/ 2001 with a request to issue direction calling for records leading up to and inclusive of the impugned orders passed by the RDO dated 26.11.2001 as confirmed the order for MRO Rural Visakhapatnam in Rc.No.730/2000/SP.R.I/ Dated 23.1.2001.

The Hon'ble High Court in its orders dated 8.8.2007 has disposed the WP with a direction to the Writ petitioner to file a revision before the competent authority within a period of four weeks from the date of receipt of the order and on such filing, the Revisional authority is further directed to dispose of the said revision within a period of four weeks thereafter and with regard to possession of the parties shall continue to maintain status-quo till disposal of the revision by the Revisional authority. As per the directions of the Hon'ble High Court Smt Puvvala Kamala, Wife of Lokesh Behara has filed RP before the Jt.Collector and the Revision authority under section 9 of the AP Land and Pattadar pass book Act 1971 amended 1989 through their counsel. The matter was taken up as a Revision by the Revisional authority & Joint Collector and it was posted for enquiry. The case was heard on 1-3-2008. Revision petitioner called absent. Her advocate also called absent. During the course of the enquiry it was noticed that No recorded evidence or in any manner filed by the Revision Petitioner to support his objections. He has also submitted that as per the report of the Tahsildar, VSP Rural the status of the land is that the land in Sy.No.346 was into 2 subdivisions i.e., 346/ 1 & 346/2 and no assignments were given to any individuals in the above lands. The Tahsildar has also informed that neither the Revision petitioner nor the vendor Sri Chilla Appala Raju is having any right over the land. Therefore, on perusal of the records produced before the Revisional authority and the Joint Collector, orders were passed duly dismissing the Revision petition as it do not contain any valid grounds to interfere with the orders passed by the RDO, Visakhapatnam issued in Proceedings Rc.No.1318/ 2001/B Dated 26.11.2001 as the suit land is a clear Government land and never assigned to the petitioners or any one else.

The Dist.Collector has also reported that according the AP Rights in Land and Pattadar Pass Books Act 1971. Section 5 (5) against every order of the recording authority either making an amendment in the record of rights or refusing to make such an amendment and appeal shall lie to the RDO or such authority as may be prescribed within a period of 60 days from the date of communication of the said order and the decision of the appellate authority thereon shall subject to the provisions of section 9 be final. Section 9 the Collector may either suo-motu or on an application made to him, call for and examine the record of any Record of any recording authority MRO or RDO under Sections 3,5,5A or 5B in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for reconsideration, he may pass orders accordingly. It was also reported by the Collector, VSP that in the instance case, the appeal

filed by the applicant before the Government is not valid since the orders passed by the Revisional Authority under the provisions contained in Section 9 of the AP ROR Act, 1971 is become final. Therefore, the appeal is not maintainable, and also requested that the appeal petition filed by the applicant may kindly be rejected at the admission stage as it is not maintainable as per the provisions and rules contained under the AP Land and Pattadar Pass Books, Act 1971.

The Spl.CS & CCLA, Hyderabad who has been requested to submit the report with specific remarks on the report of the Collector, Visakhapatnam, he has furnished his report in the reference 4<sup>th</sup> read above, in which while observing all the facts, he has reported that as regards the grant of assignment in favour of Sri Ch.Appala Raju, Ex-Serviceman from whom the appellant had purchased, the appellant has filed a copy of the assignment, adangals for the Faslis 1405, 1406 and 1407 and also the revenue tax receipts. Hence, the Collector, Visakhapatnam was requested to send the revenue records in respect of Sy.No.346. But, he has informed that the relevant revenue records are torn out and can not be looked into. The Spl.CS & CCLA, Hyderabad has also reported that the scrutiny reveals that the entries in the revenue records and possession continuously for a long period as seen from the adangals, establish the genuineness of the claim of the appellant through the original assignee i.e., Ch. Appala Raju. Therefore, the suspicion cast on assignment in favour of Ch. Appala Raju is not accepted, and the District Collector has not filed any material to prove that the assignment made in favour of Ch. Appala Raju, is bogus and non availability of Government record should not be put against the appellant.

Government have examined the issue in detail in consultation with the Law Department and observed that Under BSO 15 (18) (2) lays down that the State Government may at any time either suo-motu or an application made to them call for and examine the records relating to any decision or order passed or proceedings taken by any authority or office subordinate to them under the preceding sub-paragraph for the purpose of satisfying themselves, as to the legality or propriety of such decision or order or as to the regularity of such proceedings and pass such order in reference thereto as they deem fit. In view of the above provision, the application filed by Smt. P.Kamala has been allowed to decide whether the assignment alleged to have been made in favour of Ch.Appala Raju, Ex-Serviceman by the Tahsildar, Visakhapatnam on 2.5.1982 is valid or not by affording an opportunity of representation to the applicant and District Collector, Visakhapatnam as proposed.

Accordingly, it has been decided to give an opportunity to the appellant to examine the case by conducting hearing, and case is called for hearing on 14-09-2011 and finally on 17-09-2011. Heard the case.

The Counsel for the Appellant and the Tahsildar, Visakhapatnam (Rural) and Mandal Surveyor were present:

The Counsel for the Appellant has submitted a written arguments and submitted that –

- a) When the Appellant for issuance of Pattadar Pass Book and Title Deed under the provisions of A.P. Rights in Land and Pattadar Pass Books Act 1971 (“ROR Act”), the Tahsildar, Visakhapatnam Rural (R-3) rejected the claim, by proceedings dated:23-01-2001, simply holding that the matter had been enquired into and the records of the said office did not tally (with the claim of the appellant ). The said order is cursory and bereft of relevant details.
- b) That the R.D.O., Visakhapatnam Division (R-2) dismissed the appeal preferred U/Sec.5(5) of the ROR Act, on 26-11-2001, recording a finding that Sy.No.346/7 was shown to be measuring only Acres 4.40 cents in the village records (in para-12 of the order). This would indicate that the land in Sy.No.346 had been sub- divided and that the records disclosed such sub-division. The R.D.O., also held (in para-24 of the order) that since G.O.Ms.No.1117 came into effect on 11-11-1993, since the possession of the land was delivered to the appellant on 23-11-1992, under the strength of a sale agreement, the transaction is invalid. The R.D.O. lost sight of crucial aspect- that G.O.Ms.No.1117 came to be issued, only clarifying the legal position, upon an express request made by the Collector, Visakhapatnam. As a matter of fact, BSO-15 Para-11 (2) (v) (a) itself stipulates that land assigned to Ex-servicemen should not be sold or otherwise alienated for a period of 10

years. The said standing order was issued originally on 04-01-1951, with amendments from time to time. The aforementioned provision was introduced on 30-04-1963 vide G.O.Ms.No.743 Revenue (B) Department. As such, the finding of the R.D.O. in this connection, is not tenable.

- c) That the recent application is filed by the appellant before the Hon'ble Government, which is the Revisional Authority under BSO-15, Para-18(2) as the authorities have adjudicated upon the very grant made in favour of the Ex-Servicemen under BSO-15, deciding the very validity/ genuineness of the said assignment. As such, the present application is maintainable in law.
- d) An enquiry was ordered and Memo No.44854/Assn-I(2)/2008, Dt:27-11-2008 was issued, directing the Chief Commissioner of Land Administration to examine the issue with reference to the report of the Collector, Dt:03-11-2009. Pursuant to the same, a report dated:30-12-2009 was also submitted by the CCLA, informing that the suspicion cast on the assignment made in favour of the Ex-servicemen, is unacceptable and that no material is forthcoming to show that the assignment is bogus and mere non- availability of Government record, cannot be put against the appellant . It was also categorically held that Sy.No.346 was sub- divided into 9 sub- divisions i.e.346/1 to 346/9 and as such, the stand taken by the authorities in the matter, is factually incorrect. The said report of the CCLA clinchingly establishes the case of the appellant and the same can be taken cognizance of by the Hon'ble Government, U/Sec.2 of the Andhra Pradesh Revenue Enquiries Act 1893 to arrive at an appropriate conclusion in the matter.
- e) That the findings recorded by the Tahsildar, the R.D.O. and the Joint Collector, in relation to the assignment made in favour of the Ex- serviceman, which is the root of the matter, are perverse, one –sided and have been arrived at without considering the facts and circumstances of the case, as also the authentic official records available. The authorities got carried away and misdirected themselves , merely because, the Darkhast Register was not available.
- f) That the Tahsildar rejected the request of the appellant, by passing a non –speaking order, simply saying that the records produced by the appellant , did not tally with the office records. The R.D.O. went several steps ahead and took-upon himself the onerous task of deciding the very validity of the agreement of sale and consequent sale deed, executed in favour of the appellant by the Ex-serviceman , with a view to defeat the legitimate interests of the appellant. The R.D.O. recorded a categorical findings, which has the effect of recognizing the existence of Sy.No.346/7. The order of the R.D.O. clearly reveals that the record discloses the existence of sub- divisions in Sy.No.346, which Field Number also contains Sub- Division-7 which is reflected in the records.
- g) That the Following records would show that there does exist Sy.No.346/7 in Madhuravada Village, which was sub- divided and assigned:
  - 1) Certified copy of FMB obtained from the Central Survey Office, Narayanaguda, Hyderabad , which shows Survey Field No.346 to be having (7) sub- divisions, giving the field measurements in relation thereto. Sy.No.346/7 is the southern most bit of Survey Field No.346. This is an authentic official record, of which, certified copy is proof, in terms of section-79 of the Evidence Act, 1872.
  - 2) D- Form Patta dated:02-05-1982 issued in favour of Ch. Appalaraju, Ex-Serviceman, by the Tahsildar, Visakhapatnam Taluq. The original patta is also available with the appellant. Merely because the D.R. File is not forthcoming, it cannot be presumed in law that there are no assignments in Sy.No.346 of Madhuravada Village.
  - 3) Notification issued U/Sec.22-A of the Registration Act.1908, vide G.O.Ms.583, Revenue (Registration-1), Dated:04-05-2005. This statutory notification clearly reveals, that the land in question is AWD

and Sy.No.346 has nine (9) sub-divisions. Sub- divisions 346/1,2,3,4,5,6,7,8 and 9 are shown in the said notification as AWD. This clearly shows that the land was sub- divided. The said fact is also evident from the Adangals.

- 4) Village Account No.10(1) and ROR 1-B Register clearly show that the land in Survey Field No.346 have been further sub- divided and the name of the assignees are also shown in relation to some of the sub-divisions i.e.346/3,4 and 5. This clearly shows that the land in Survey Field No.346 was not only sub- divided, but also assigned.
- 5) Pattadar Pass Book and Title Deed issued in favour of K. Rama Rao, and K. Chalapathi Rao Ex- Serviceman, in relation to the land in Sy.No.346/3, 346/4 and 346/5, show that they have been assigned vide D- Form Patta vide D.R.No.428 /87 and D.R.No.429/87. This also shows sub- division and assignment of land in Sy.No.346.
- 6) Orders dated:21-04-2009 passed by the Director of Settlements ,in a Revision Petition (R.P.No.33/04(A-2)] filed under Sec-5 (2) of the Estates Abolition Act, by the Tahsildar, Visakhapatnam Rural, a reading of which, would show that the land in Sy.No.346 had in fact been sub- divided. The Tahsildar had admitted that there was assignment in favour of Ex-Serviceman in Sy.No.346, which is referred to in Para-18 of the said order of the Director of Settlements. The stand taken by the authorities, now in this matter, runs contra to the stand taken in the proceedings under the Estates Abolition Act.
- 7) The report of the CCLA, Dt.30.12.2009, sent to the Hon'ble Government, clearly discloses that the stand taken by the authorities (R-1 to R-3), is factually incorrect and is untenable. It has been clearly stated to the effect that non- availability of record (relating to assignment), cannot be put against the appellant/ claimant.
- 8) Certificate in Rc.207/ Land/2000-E, Dated:12-05-2000 issued by the Zilla Sainik Welfare Officer, Visakhapatnam, clearly shows that Ch.Appala Raju is a bonafide Ex- Serviceman who had been assigned land in Sy.No.346/7 of Madhuravada. This also shows that the claim of the appellant in the matter is bonafide and genuine. Mere non- entry of his name in the records, would not render in- valid any claim made on the strength of the D- Form Patta. The failure on the part of the Revenue authorities to update records, cannot take away title of the land holder.
- 9) Land Revenue Receipt dated:05-06-1983 evidencing the payment of cist by Sri Chilla Appala Raju, Ex- Serviceman, for the Faslies 1390 to 1394 in relation to the land in sy.No.346/7 ( the appellant purchased the land from the said Ch. Appala Raju). This shows that the said person was the pattadar of the land.
- 10) That the orders/ proceedings of the authorities below (R-1 to R-3) suffer from patent illegalities and errors apparent on the face of the record and are liable to be set- aside.

Therefore, the Appellant prays that the Hon'ble Government may be pleased to issue appropriate orders in the matter, exercising the powers conferred under the A.P. Revenue Enquiries Act.1893 and BSO-15, Para -18 (2), setting aside the orders/ proceedings of the Tahsildar, Visakhapatnam Rural Mandal, the R.D.O., Visakhapatnam Division and the Joint Collector, Visakhapatnam District and issue consequential directions to enter the name of the appellant in all the Revenue Records and issue Pattadar Pass Book and Title Deed, in relation to the land in Sy.No.346/7 of Madhuravada Village, Visakhapatnam Rural Mandal, Visakhapatnam District.

After perusal of the records and averments made by the Counsel for the Appellant, and keeping in view the remarks of the Spl.CS & CCLA, Hyderabad, it is observed that the matter needs thorough re-verification of the records by the District Administration on the points raised by the Counsel for the Appellant like Sub-divisions made in Sy.No.346 and the Original D-Form Patta produced by the Counsel for the Appellant etc., before the Government. Hence, the case is remanded back to the Joint Collector, Visakhapatnam for thorough re-verification of the records and to take appropriate decision on the request of the appellant, as the District Administration should procure all relevant material to prove beyond doubt that assignment made in favour of Ch. Appala Raju, is bogus.

( BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH )

ANIL CHANDRA PUNETHA  
PRINCIPAL SECRETARY TO GOVERNMENT

To

The Collector., Visakhapatnam Dist.  
The Spl.CS & CCLA, Hyderabad

Smt Puvvala Kamala, Wife of Lokesh Behara TPT Colony,  
Visakhapatnam through the Counsel for the Appellant

Sri S.V. Bhatt, Counsel for the Appellant  
Office: 3-6-469/2., St.No.6., Himayatnagar  
Hyderabad.

PS to Prl. Secy., to Govt. Revenue  
S.F./ SCs

//FORWARDED :: BY ORDER//

SECTION OFFICER